

**Minutes
HEARING OFFICER
APRIL 1, 2008**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

David Williams, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Shawn Daffara, Planner II
Alan Como, Planner II
Nick Graves, Planning Intern

Number of Interested Citizens Present: 16

Meeting convened at 1:30 PM and was called to order by Mr. Williams. He noted that anyone wishing to appeal a decision made today by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days by April 15, 2008 at 3:00 PM.

1. Mr. Williams approved the Hearing Officer Minutes for February 19, 2008 and March 18, 2008.

2. Mr. Williams noted that the following case(s) had been withdrawn:

- Hold a public hearing for a request by **ANA'S DAY CARE (PL080062)** (Ana Nguyen, applicant/property owner) located at 454 West Laron Lane in the R1-6, Single Family Residential District for:

ZUP08029 Use permit to allow a home day care center for up to ten (10) children.
WITHDRAWN BY APPLICANT

- Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **ROWE RESIDENCE (PL070487/ABT07029)** (Richard Rowe, property owner) Complaint CE073237 located at 1405 North Rose Street in the R1-6, Single Family Residential District.
WITHDRAWN BY COT - NEIGHBORHOOD ENHANCEMENT DEPARTMENT

2. Hold a public hearing for a request by the **HARRISON RESIDENCE (PL080060)** (Jared Malone/Design Profile, applicant; William & Maureen Harrison Jr., property owners) located at 5519 South Compass Road in the R1-6, Single Family Residential District for:

ZUP08031 Use permit to allow a second story addition.

VAR08005 Variance to reduce the north side yard setback from five (5) feet to zero (0) feet.

Mr. Robert Long of Design Profile was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this request, and stated that no additional public input or information had been received since the staff report had been issued.

Mr. Williams stated that if this request is approved today he would suggest that staff place a drawing in the case file that clearly depicts the 30 ft. setback area and where it is located if they had not already done so.

Mr. Williams stated that it was his understanding that this lot is adjacent to an access track to the lake and that only the 30 ft. setback garage area would encroach to the 0' setback.

DECISION:

Mr. Williams approved PL080060/ZUP08031/VAR080005 subject to the following conditions:

1. The use permit is valid for the plans as submitted to and approved by the Hearing Officer.
2. All required permits and clearances shall be obtained from the Building Safety Division.
3. The variance is valid for the thirty (30) feet that is shown on the plans.

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3. Hold a public hearing for a request by **SPRINT NEXTEL (PL080074)** (Brandon Brown/Reliant Land Services, applicant; Mijon III LLC, property owner) located at 225 East Apache Boulevard in the R/O, Residential/Office District for:

ZUP08032 Use permit to allow additional antennas on an existing array.

Mr. Brandon Brown of Reliant Land Services was present to represent this case.

Shawn Daffara, staff planner, gave an overview of the case, and stated that no additional public input or information had been received since the staff report had been issued.

Mr. Williams questioned whether a photo simulation was available for this request. Mr. Daffara responded that the applicant had encountered technical problems in providing this and was unable to do so prior to the staff report being issued.

Mr. Brown stated that they did not have photo simulations available at this time. Mr. Williams asked if the new additional antennas would be located in the middle of the existing antenna array. Mr. Brown responded that this was correct.

Tara Ellman of the City of Tempe, inquired as to what visual changes would be evident and wanted to confirm that the dimensions and height of the new antennas were essentially the same as what is already there. Mr. Williams responded that instead of two antennas facing each direction there would now be three antennas with

the new antenna(s) placed in the space between what was already there rather than spreading out or getting larger. The rectangular panel would be on the same level as what is already there.

A sketch was presented and the location of the new antenna(s) indicated. Mr. Williams explained, with staff confirmation, that the new antennas would be essentially the same height as what was already there. Ms. Ellman stated that in that case she did not oppose this request.

DECISION:

Mr. Williams approved PL080074/ZUP08032 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
3. The wireless device shall be removed within thirty (30) days of discontinuance of use.
4. The new antennas shall be painted to match the existing antennas and elevator penthouse.
5. Sprint Nextel shall tag all of its equipment associated with this application with identification and contact information.

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4. Hold a public hearing for a request by the **ARMIJO RESIDENCE (PL080077)** (Nash & Virginia Armijo, applicants/property owners) located at 1122 East Broadmor Drive in the R1-6, Single Family Residential District for:

VAR08006 Variance to reduce the east side yard setback from five (5) feet to zero (0) feet.

Mr. Nash Armijo was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. He noted that this carport had been erected 30 years ago and that the Building Safety Department could not, in response to a complaint, find a building permit that was issued 30 years ago. The neighbors to the east were in support of this request to leave the carport as it exists today and had no problem with signing the document with the County Recorder's office to allow this 'no build' easement.

Mr. Armijo noted that the carport is the same as when it was built 30 years ago, that no changes had been made to the original structure. He asked what the next step would be, should this request be approved today. Mr. Daffara explained that Mr. Armijo should contact Mike Williams of Building Safety whom he had spoken with before.

DECISION:

Mr. Williams approved PL080077/VAR08006 subject to the following conditions:

1. The variance is valid for the plans as submitted to and approved by the Hearing Officer.
 2. Obtain all necessary clearances from the Building Safety Division.
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5. Hold a public hearing for a request by **BROADWAY VILLAGE – SMOKE MART (PL080078)** (Saleem Masri, applicant; MPB Realty Services, property owner) located at 818 West Broadway Road, Suite No. 105A in the CSS, Commercial Shopping and Services District for:

ZUP08033 Use permit to allow a smoke shop.

Mr. Saleem Masri was present to represent this case.

Alan Como, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. He noted that the applicant has confirmed that he does not plan to allow smoking within his establishment.

Mr. Williams asked if an additional permit was required if the applicant did intend to allow smoking. Mr. Como stated that no additional permit was required but that it did need to be disclosed.

Mr. Williams asked that applicant explain what else besides smoking material would be sold in the store. Mr. Masri responded that t-shirts, hats, gifts and knives would be sold like a convenience store.

Mr. Williams pointed out that Condition of Approval No. 4 required a security plan. Steve Abrahamson, Planning and Zoning Coordinator, explained to Mr. Masri that he would need to contact the Tempe Police Department and set up a meeting and that the security plan would assure that the safety and lives of the customers and the store personnel would be covered.

Mr. Williams stated that the security plan was being required as weapons in the form of knives were being sold.

DECISION:

Mr. Williams approved PL080078/ZUP08033 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
3. This store is not permitted to operate a hookah lounge under this use permit. A hookah lounge would be an intensification of this use and would require a separate use permit.
4. A security plan is required for this establishment due to the sale of weapons. Contact Tempe Police Department Crime Prevention Unit (480-858-6333) by **May 1, 2008**.

6. Hold a public hearing for a request by the **EVENSON RESIDENCE (PL080079)** (Al Evenson, applicant/property owner) located at 421 East Sunburst Lane in the R1-7, Single Family Residential District for:

ZUP08034 Use permit standard to reduce the rear yard setback by twenty percent (20%) from fifteen (15) feet to twelve (12) feet.

ZUP08035 Use permit standard to reduce the east side yard setback by twenty percent (20%) from seven (7) feet to five (5) feet six (6) inches.

ZUP08040 Use permit standard to reduce the west side yard setback by twenty percent (20%) from seven (7) feet to five (5) feet six (6) inches.

Mr. Howard Pals was present to represent this case for Mr. Al Evenson.

Nick Graves, staff planner, gave an overview of the case, and stated that no additional public input or information had been received since the staff report had been issued.

Mr. Pals noted that the property owners to the east and west of this address were in support of this project, and submitted letters from these residents stating their support.

DECISION:

Mr. Williams approved PL080079/ZUP08034/ZUP08035/ZUP08040 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The use permit approval is valid from the plans as submitted to and approved by the Hearing Officer.
3. The building additions shall match the existing residence in design, color and materials.

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7. Hold a public hearing for a request by the **MURPHY PROPERTY (PL080089)** (Patrick Murphy, applicant/property owner) located at 1420 South Oakley Place in the R1-6, Single Family Residential District for:

ZUP08036 Use permit to allow parking in the front yard setback.

Mr. Glenn Jurena was present to represent this case for Mr. Patrick Murphy.

Alan Como, staff planner, gave an overview of this case, and stated that since the staff report had been issued, staff had received three (3) additional letters – one (1) in support and two (2) in opposition with one of those opposition letters stating that the converted carport should be brought into compliance with the code regulations – that the conversion had been done without a permit. Mr. Como noted that the other letter of opposition was from the Neighborhood Association for the area which had met last night to discuss the neighborhood concerns with the parking situation for Mr. Murphy – the letter stated that they did support parking on the driveway within the 20 ft. setback but they did not support the applicant having additional parking in the front yard setback. He noted that Mr. Murphy had enclosed the carport to livable space and wished to provide a dedicated parking area for his vehicles. Mr. Como stated that he had been informed by Mr. Murphy that he did not intend to improve or pave any of the additional surface in the front yard setback should this request be approved – that the parking would not be on the lawn but would be limited to the driveway area located in the front yard setback. Mr. Como stated that Mr. Murphy said that he did not intend for more than one or two cars to be parked in the driveway.

Mr. Como noted that Mr. Murphy was unable to attend today's meeting however his builder/architect was present to speak on the case.

Mr. Williams stated that his review of this neighborhood indicated that there were no other carports converted to living space as this one has been – that it is common in other areas of the city but not in this neighborhood.

Mr. Williams noted that his other area of concern was the lack of permit for this conversion. He questioned staff as to whether it was allowed in this area under the city code and if so, whether the structure met building codes. Mr. Como responded that he did not know if the structure, as erected, met building codes that there had been a complaint made in January of 2008 and he believed Mr. Murphy was currently going thru the process of building safety review.

Mr. Como noted that the proposed conditions of approval did stipulate that the carport conversion had to match the existing house in color and materials. Mr. Williams asked if that would require changes to the existing structure or existing surface. Mr. Como noted that it was a brick home and the carport conversion consisted of siding.

Mr. Williams asked staff if the City of Tempe required a permit to widen a driveway or pave a surface to the front yard area. Mr. Como responded that no permit is required to do that, however what is required by City code is that any parking surface be an approved surface which means that it has to be made up of some type of compacted material such as asphalt, concrete or decomposed granite – that it has to look like part of the permanent parking space – that is what is required for any additional parking outside of the driveway.

Mr. Jurena noted that Mr. Murphy wanted to apologize for the lack of permit, and wanted to emphasize that this is not going to be a rental property and that he has made an extensive commitment to this home with \$150,000 worth of improvements. Mr. Jurena noted that the final product was going to have a stucco finish and what was there now was never meant to be a final finish. Murphy was adamant that the final project would be complimentary to the neighborhood.

Ms. Diane Harrison of the City of Tempe and stated that she lived directly across from this property. She asked if there were any guarantees if the structure was going to be made to look nice and not just enclosed. Mr. Williams responded that, should this request be approved, Condition of Approval No. 3 would cover that issue and would require it to be modified to match the house. Mr. Abrahamson expanded on how the applicant would be required to adhere to the conditions of approval is that the building plan check process would be monitoring these types of issues and ascertain that there was a match to the house. Mr. Williams stated that for the record he did find the conversion inconsistent with the neighborhood character.

Ms. Josephine Johnson of the City of Tempe spoke in opposition to this request and noted that she had called in January of 2008 to indicate that there was no permit issued for the carport conversion which the City of Tempe requires a firewall for safety purposes. Since the time of her original complaint a window has been cut into the carport conversion and a nine (9) foot slide has been added to the swimming pool. She asked that the aerial photograph be referred to and noted that she had been on the Board of the Adjustment when the original property owner asked that a workshop be allowed. Since that time the property has changed hands several times and at times there appears to be as many as nine (9) people living in that original workshop structure. Sometimes there are as many as ten (10) cars parked at this property.

Ms. Tara Ellman of the City of Tempe stated that she wanted to speak in support of some general principles. Tempe has a lot of single family homes and applicant had been inconsistent with his reasons for enclosing the carport. Homes close to the university being used as rentals try to pack in as many people as possible to make it economically viable. If the applicant is going to use the home as a single family residence there is ample space for two cars to park so what is the reason for additional parking – is it to increase revenue for tenants? These type of issues are really important when living so close to the university and that should this request be approved, the City would be actively encouraging the type of excessive student parking that occurs – this would be a bad precedent. Ms. Ellman felt that a better description and plan should be offered by the applicant.

Mr. Williams explained that this request only related to legal parking within the driveway/front yard setback area – there is no plan to expand the driveway or pave the front yard at this time. Mr. Williams noted that since the applicant no longer has the carport area for parking, he is now parking in an area designated as the front yard setback and that this request is to correct that situation. There is no physical change being requested today, said Mr. Williams. Ms. Ellman responded that she misunderstood, that she thought the intent was to increase the size of the parking area but would like staff to review a gravel area next to the driveway. Mr. Abrahamson

confirmed, in response to a question from Mr. Williams, that there had been no plans submitted to increase the size of the driveway but that what should be understood is that when there is a master plan for the city, it is understood that there should be parking in a garage or under a carport.

Mr. Eric Johnson referred to Ms. Johnson's comment on the 9 ft. water slide – he said it was more like a themed water park slide with landscaping and boulders. He noted that they had been informed previously that that home was going to be occupied by Mr. Murphy's elderly parents and not be utilized as a rental property – however it has always appeared to be a rental property. He said he is skeptical of Mr. Murphy's explanation of the property's current use, however what he would like to know is if there is some type of zoning requirement to adhere to before this type of landscaping (boulders, water slide, etc.) can be installed in a residential area. Mr. Williams noted that they did have a permit for the pool and asked staff if the slide is part of that permit and has to be constructed to code – if there is a particular height or not. Mr. Williams noted that this is a separate issue from the request before the Hearing Officer, but that staff can investigate and give him this information.

Mr. Dave Victorson of the City of Tempe stated that he wanted to disclose that he had only spoken at length with Mr. Murphy one time. Mr. Victorson stated that he owned a rental house located next to Ms. Ellman's property. He stated that his opinion as a landlord and neighbor was that the neighborhood was better off having Mr. Murphy own that rental house than some of the other people who buy and own rental properties in the area. Mr. Victorson stated that he wanted to make another disclosure and that he may no longer own rental property in the area within a year's time, as he would be selling his homes and moving, depending on the real estate market. He stated that it seemed as though Mr. Murphy was a pretty good landlord who tried to adhere to the rules and regulations of the City of Tempe.

Mr. Jurena responded to questions from Mr. Williams regarding the pool and landscaping in that area saying that a pool permit has been issued and everything that has been done at this time has been approved. At this point construction work is stopped, but the exterior of the carport conversion will meet the home exterior if this request is approved.

Mr. Williams stated that this type of enclosure is inconsistent with the neighborhood. Given the significant investment the applicant has made in the property, Mr. Williams stated that he would like to see if there is a need for additional living space is that something can be done in the rear of the house, or in such a manner that is consistent with the neighborhood. He is not able to support this request based on the inconsistency of the structure with the neighborhood. This is an area where property values are high enough that he would like to see the owner invest in a reconfiguration of the property that complies with zoning requirements.

DECISION:

Mr. Williams denied PL080089/ZUP08036.

8. Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **FELSINGER RESIDENCE (PL080076/ABT08004)** (Arthur Felsing, property owner) Complaint CE072099 located at 1031 East Lilac Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jan Koehn, City of Tempe – Neighborhood Enhancement Department, stated that this property has had compliance issues on going for ten (10) years. There have been previous abatements and the property is again

non-compliant. Criminal charges were filed against Mr. Felsing, however he failed to appear for the January 3, 2008 court date. Ms. Koehn requested that the Hearing Officer authorize a 180 day standing abatement period for this property.

Mr. Williams asked if an abatement for this property was ordered last year. Ms. Koehn confirmed abatement proceedings had been instigated for four (4) consecutive years.

DECISION:

Mr. Williams approved abatement proceedings for PL080076/ABT08004 for an open abatement period of 180 days (6 months) standing order.

The next Hearing Officer public hearing will be held on **Tuesday, April 15, 2008.**

There being no further business the public hearing adjourned at 2:38 PM.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Planning and Zoning Coordinator
for David Williams, Hearing Officer

SA:dm